

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR  
and  
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1861 of 2015

Kalavathy

... Petitioner

Vs

1. The Secretary  
State of Tamil Nadu  
Home, Prohibition & Excise Department  
Secretariat, Chennai 600009.
2. The Commissioner of Police  
Chennai City, Vepery, Chennai 600 007.
3. The Inspector of Police  
S7 Madipakkam Police Station  
Chennai.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the order passed by the 2<sup>nd</sup> respondent in BCDFGISSSV No.576/2015 dated 17.07.2015 and quash the same and further direct the respondents to produce the body of the detenu viz., Thiru Ganesh, son of Vikraman aged about 26 years now confined at Central Prison, Puzhal, before this Court and set him at liberty.

For Petitioner : Mr.J.William Shakesphere

For Respondents : Mr.M.Maharaja,  
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

Challenge is made to the order of detention passed by the second respondent vide Proceedings in BCDFGISSSV No.576/2015 dated 17.07.2015, whereby the son of the petitioner by name Ganesh, son of Vikraman aged about 26 years was ordered to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a "GOONDA".

2.As per the grounds of detention dated 17.07.2015, passed by the second respondent, the detenu came to adverse notice in the following case:

Ground case:

| Sl No. | Name of the Police station and Crime No.     | Section of law                        |
|--------|----------------------------------------------|---------------------------------------|
| 1      | S7 Madipakkam Police Station Cr.No.1179/2015 | 302 IPC @ 147, 148, 120 [B] & 302 IPC |

3.Though many grounds have been raised in the petition, Mr.J.William Shakesphere, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

4.Learned counsel appearing for the petitioner submitted that the detenu is in remand in the ground case in Cr.No.1179/2015 registered by S7 Madipakkam Police Station and the bail application moved by him in the said case was dismissed by the learned Principal Sessions Judge, Chengalpattu in CrI.MP.No.1473/2015 on 09.07.2015 and he has not moved any further bail application in the ground case as on the date of passing of the detention order. The learned counsel would add that admittedly, in this case, the detenu has not moved any bail application in the ground case. When no bail application is filed, there is no real possibility of the detenu coming out on bail. No cogent materials are available before the Detaining Authority to conclude / to apprehend that the detenu is likely to get bail in the ground case and there is no imminent possibility of the detenu coming out on bail in the said case.

He would further add that the offences committed by the detenu in the ground case relate only to the private offence and do not relate to any public disturbance or do not cause any prejudice to the maintenance of public order. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is real possibility of the detenu coming out on bail in the ground case, is a mere ipse dixit without any cogent materials. In support of his contention, he relies on the judgments of the Hon'ble Apex Court reported in [a] 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] ; [b]2005 [1] CTC 577 [VELMURUGAN @ VELU Vs. THE COMMISSIONER OF POLICE] and [c] 2012 [7] SCC 181 [HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR] .

5.Per contra, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

6.We have heard the learned counsel for both sides with regard to the facts and citation.

7.As could be seen from paragraph 3 of the Grounds of detention, the detenu is in remand in the ground case [Cr.No.1179/2015] and he has not filed any bail application in the said ground case as on the date of passing of the detention order, in furtherance of the dismissal of the earlier bail application by the learned Principal Sessions Judge, Chengalpattu in Cr1.MP.No.1473/2015 on 09.07.2015. When no bail application is filed, there is no imminent possibility of the detenu coming out on bail. Therefore, the subjective satisfaction arrived at by the detaining authority that there is real possibility of his coming out on bail in the ground case would be a mere ipse dixit and that would vitiate the order of detention and the same is indicative of total non-application of mind on the part of the Detaining Authority. Therefore on this ground the impugned order is liable to be set aside. Hence, the order of detention cannot be sustained in the eye of law and the same is liable to be set aside.

8. In this connection it is useful to refer the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioner.

[a] In 2006 [1] MLJ [Cr1.] 539, [T.V.SARAVANAN @ S.A.R.PRASANNA VENKATACHARIAR CHATURVEDI V. STATE OF TAMILNADU THROUGH SECRETARY AND ANOTHER] , wherein the Hon'ble Apex Court has held as follows:

"The Courts had rejected the bail applications moved by the appellant and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is mere ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record, in the absence of such material on record, the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

[b] In 2005 (1) CTC 577 (Velmurugan @ Velu vs. The Commissioner of Police), it has been held as follows:

"3.....unless there is a clear expression by the detaining authority in the grounds of detention with reference to the imminent possibility of the detenu being released on bail by filing bail application, the detaining authority would not choose to pass the detention order. In order to prevent the detenu from committing the acts, which would be disturbance to public order and public health, the detaining authority shall consider the materials and on the basis of subjective satisfaction that there is imminent

possibility of the detenu coming out on bail or likelihood of the detenu being released on bail, the detaining authority may pass such an order under Tamil Nadu Act 14 of 1982. When such an essential requirement, namely, the imminent possibility of the detenu coming out on bail, is absent, it has to be held that the order of detention is vitiated."

[c]In 2012 [7] SCC 181 [cited supra] which reads thus:-  
12. In Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr., (2011) 5 SCC 244, this Court while dealing with the issue held :

"..... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.....

In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground."

14..... Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law."

(emphasis supplied)

9.Further, the offences committed by the detenu in the ground case would not attract section 3[2] of the Tamil Nadu Act 14 of 1982 so as to brand him as a Goonda. The nature of the offence referred therein would relate only to private offence and not involving any act causing public disturbance or public tranquility. Even on this ground also the detention order is liable to be set aside.

10.It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of Constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

11.In the light of the above facts, we have no hesitation in quashing the order of detention on the above mentioned grounds.

12. Accordingly, the Habeas Corpus Petition is allowed and the impugned detention order passed by the second respondent is set aside. The detenu is directed to be released forthwith unless his presence is required in connection with any other case.

13.At this juncture, learned Additional Public Prosecutor submitted that the investigation in Cr.No.1179/2015 has been completed and final report has been filed and the case has been committed to the Court of Sessions in PRC No.42/2015 on the file of the learned Judicial Magistrate, Alandur and that the learned Magistrate has not been able to complete the committal proceedings in view of the fact that one of the accused by name Bala @ Balakrishnan is absconding and that if the detenu's detention order is quashed, he would also resort to the same dilatory tactics and would delay the trial proceedings. It is further submitted that the next date of hearing is on 04.01.2016.

14.Considering the submissions made by the learned Additional Public Prosecutor, this Court directs the detenu Ganesh to file an affidavit before the Committal Magistrate, on being released on bail by the regular Court, that he will not abscond and that he will appear and participate in the trial proceedings. On failure to comply with the above direction of this Court by the detenu, the learned Magistrate/Trial Court is

entitled to take appropriate action against the detenu in accordance with law as if the conditions have been imposed and the detenu released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

Sd/-  
Assistant Registrar(CS III)

//True Copy//

AP Sub Assistant Registrar  
To

1. The Secretary  
State of Tamil Nadu  
Home, Prohibition & Excise Department  
Secretariat, Chennai 600009.
2. The Commissioner of Police  
Chennai City, Vepery, Chennai 600 007.
3. The Inspector of Police  
S7 Madipakkam Police Station  
Chennai.
4. The Judicial Magistrate,  
Alandur.
5. -Do- Through The Chief Judicial Magistrate,  
Alandur.
6. The Superintendent,  
Central Prison, Puzhal, Chennai.
7. The Joint Secretary to Government,  
Public(Law & Order),  
Fort Saint George, Chennai - 9.
8. The Public Prosecutor,  
High Court, Madras.

VD(CO)  
CA(27/01/2016)

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